

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA                          }  
    }  
VS.    } CRIMINAL ACTION NO. H-03-235  
    }  
EULALIO MORENO                                    }

4:08-cv-2590

**OPINION & ORDER**

Pending before the Court are Defendant Eulalio Moreno's ("Moreno") Motion to Vacate under 28 USC § 2255 (Doc. 91). Also before the Court is Magistrate Judge Stacy's Memorandum and Recommendation (Doc. 101), recommending the motion be denied, as well as Moreno's Objections thereto (Doc. 107).

Moreno's Motion to Vacate raised one argument: that his counsel's failure to file a writ of certiorari with the United States Supreme Court resulted in ineffective assistance of counsel. The Fifth Circuit has held that such an argument is "devoid of merit." *United States v. Langa*, 762 F. 2d 1288, 1291 (5th Cir. 1985). In his objections, Moreno instead raises new arguments. These new arguments should have been raised in Moreno's § 2255 motion and need not be considered.

Consequently, having independently reviewed the applicable law and the record, this Court fully adopts the Memorandum and Recommendation. The Motion to Vacate (Doc. 91) is DENIED.

SIGNED at Houston, Texas, this 3rd day of August, 2009.

  
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MELINDA HARMON  
UNITED STATES DISTRICT JUDGE